RESPONSE REQUESTED

ORIGINAL

(2)

No. 89-1632

Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1989

THE STATE OF CALIFORNIA

Petitioner,

v.

HODARI D.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL, STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether an actual physical restraint is required for a detention.

2. Whether evidence abandoned upon an illegal detention must be suppressed.

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Petitioner,

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HODARI D.,

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

The respondent respectfully prays that the writ of certiorari to review the judgment of the California Court of Appeal, First Appellate District, which was entered on December 15, 1989, be denied.

OPINIONS BELOW

The opinion of the California Court of Appeal, First Appellate District was reported at 216 Cal.App.3d 745, 265 Cal.Rptr. 79 (1989). A copy of the opinion is attached to the petition for writ of certiorari as Appendix A.

On March 15, 1990, the California Supreme Court denied review of the opinion but ordered the opinion to be depublished. A copy of the order of denial is attached to the petition for writ of certiorari as Appendix B.

JURISDICTION

The California Supreme Court denied review of the Court of Appeal decision on March 15, 1990. Under California Rules of Court sections 24(a), 25(a) and 28(f), the Court of Appeal opinion then became final and reviewable by this Court.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides as follows:

> "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

STATEMENT OF THE CASE

A. Procedural History

On April 20, 1988, a petition was filed in Alameda County Superior Court, sitting as a Juvenile Court, charging respondent with a violation of California Health and Safety Code section 11350 (possession of cocaine for sale). (Clerk's Transcript (CT) 1, 2.)

On May 2, 1988, respondent filed a motion under California Welfare and Institutions Code section 700.1 to suppress all physical evidence seized as a result of his detention. (CT 17, 18.)

On May 19, 1988, respondent's motion to suppress was denied. (Reporter's Transcript (RT) 38.) Subsequently, the juvenile court found the alleged violation of Health and Safety Code section 11350 to be true (CT 39), continued a previous wardship and ordered that respondent be placed in an appropriate county facility. (CT 50-52.)

On December 15, 1989, the California Court of Appeal, First Appellate District, in a published opinion, reversed the judgment of the juvenile court. The Court of Appeal found that the evidence offered in support of the petition had been obtained as the result of the illegal search and seizure of respondent. A copy of opinion is attached to the petition for writ of certiorari as Appendix A.

On March 15, 1990, the Supreme Court of the State of California denied petitioner's application for review and ordered the opinion not to be published in the official reports. A copy of the order is attached to the petition

for writ of certiorari as Appendix B.

On March 16, 1990, the Court of Appeal, First Appellate District, issued its remittitur certifying that the decision entered on December 15, 1989, had become final.(1)

B. Statement of the Facts

Respondent incorporates by reference the statement of the facts in the appellate opinion appended to the petition for writ of certiorari as Appendix A.

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1. On March 21, 1990, petitioner filed a motion with the Court of Appeal, First Appellate District, to recall the remittitur pending a decision on certiorari. On April 6, 1990, The Court of Appeal denied the petitioner's petition to recall the remittitur. Then, on May 4, 1990, the petitioner filed an application for stay of enforcement of the judgment of the Court of Appeal, First Appellate District. On May 8, 1990, the Honorable Sanda D. O'Connor denied petitioner's application for a stay pending disposition of petition for writ of certiorari. On May 17, 199[illegible] the juvenile court vacated its findings regarding the all[illegible]ations against respondent.

REASONS WHY THE PETITION SHOULD BE DENIED

A. Introduction and Summary

In re Hodari D. 265 Cal.Rptr. 79 (1989) is a case in which (petitioner concedes) there was no reasonable suspicion of criminal conduct, but the police, with the intention of detaining respondent, ran directly at him "in such a fashion as to cut him off and confront him head on." Contemporaneously with the police misconduct, contraband was abandoned.

Hodari D. does not present any novel issues to this Court because the decision of the California Court of Appeal, First Appellate District is in accord with Michigan v. Chesternut 486 U.S. 567 (1988) and with case law precedent throughout the United States.

The opinion in In re Hodari D. 265 Cal.Rptr. 79 (1989) should not be disturbed because it was rendered by an intermediate appellate court. The opinion is one state intermediate appellate court's fact-specific application of the standard set forth in United States v. Mendenhall 446 U.S. 544 (1980). The standard in Mendenhall was explicitly adopted by this Court in Michigan v. Chesternut, supra. Additionally, the opinion is one state intermediate appellate court's fact-specific application of the Fourth Amendment exclusionary rule under Brown v. Illinois 422 U.S. 589 (1975) and its progeny.

Petitioner's writ should also be denied because the Court of Appeal's opinion was "depublished" by the Supreme Court of the State of California under Article VI, section

14 of the California Constitution and California Rules of Court section 976 (see Appendix B attached to petitioner's petition). Therefore, Hodari D. has no precedential value. California Rules of Court section 977 bars its use as precedent.(2)

Hodari D. is simply not a suitable vehicle for deciding the very broad Fourth Amendment issues which the petitioner is attempting to raise.

Respondent's argument that the contraband was properly suppressed is based on a two-step analysis.

Step 1 (presented in Part B, infra) is that an actual physical seizure of a person is not required for a detention.

Step 2 (presented in part C, infra) is that evidence abandoned upon an illegal detention must be suppressed.

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2. California Rules of Court section 977 reads in pertinent part as follows: (a) "An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b)." The exceptions do not apply here.

B. An actual physical seizure is not required for a detention.

The petitioner's brief is contrary to some major precepts of the Fourth Amendment and case law. In search and seizure issues, the Supreme Court, for the most part, has eschewed "bright line" rules in favor of a "reasonableness" approach on a case by case basis. Katz v. United States 389 U.S. 347 (1967).

The petitioner's position is that whenever the police give chase it is always and in all circumstances, and, as a matter of law, a consensual encounter and never a detention. The petitioner wants this Court to re-write Fourth Amendment law with respect to detentions. The petitioner wants this Court to disregard the common sense "reasonable person" test and replace it with the inflexible rule that there must be a physical restraint before there can be a detention. Fourth Amendment precedent in this Court and throughout the United States does not support the petitioner's position.

In United States v. Mendenhall 446 U.S. 544, 554 (1980), Justice Stewart writing for himself and then Justice Rehnquist stated in the opinion, that whether a person is seized with the meaning of the Fourth Amendment, "only if, in view of all the circumstances surrounding the incident, a reasonable person would not have believed that he was not free to leave." Id. at p. 554 (fn. omitted). Justice Stewart provided the following examples of circumstances that might indicate a seizure: "the

threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." Id. at p. 554.

In Michigan v. Chesternut 486 U.S. 567 (1988), the full Court explicitly adopted the test set forth in Justice Stewart's opinion in Mendenhall.

In Michigan v. Chesternut, supra, this Court refused to fashion a bright-line rule applicable to all investigatory pursuits. Id. at p. 1979. This Court held that the appropriate test is whether a reasonable man, viewing the particular police conduct as a whole and within the setting of all the surrounding circumstances, would have concluded that the police had in some way restrained his liberty so that he was not free to leave Id. at p. 1979.

In Chesternut, this Court explicitly rejected Michigan's invitation to adopt a rule that "the Fourth Amendment is never implicated until an individual stops in response to the police show of authority." Id. at pp. 1978-1979. Now, just two years later, the petitioner is asking this Court to revisit the issue it decided in Chesternut, i.e., "whether the officers pursuit of respondent constituted a seizure implicating Fourth Amendment protections." Id. at p. 1978. Petitioner's claim that actual physical restraint or termination of movement is a prerequisite to implication of Fourth Amendment protections is the same claim this Court rejected in

Chesternut. This Court did not rule that a chase could not be sufficiently intimidating to constitute a detention. Since Chesternut, the test has not changed, and there is no reason to do away with a standard that has evolved from decisions in Mendenhall, Florida v. Royer 460 U.S. 491 (1983), and culminating in Chesternut.

Contrary to petitioner's complaint, the fact this test turns on specific circumstances does not render it unworkable. This Court in Chesternut stated that there was "no bright line rule" applicable to all investigatory pursuits. This Court also stated that the test "is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation." Id. at p. 1979. The strength of the test is that it is an objective test which is broad enough to apply "to the whole range of police conduct in an equally broad range of settings." There is nothing unique or difficult about applying "reasonable person" tests to police conduct. (E.g. Rhode Island v. Innis 446 U.S. 291 (1980); Illinois v. Rodriquez ____U.S.____ 58 U.S.L.W. 4892 (1990).

Under the Mendenhall-Chesternut case-by-case approach, it is to be expected that in some circumstances an aggressive police pursuit, cutting off or blocking a suspect, will constitute sufficient force or show of authority that a reasonable person would not feel free to leave.

The opinion in Hodari D. is simply one intermediate

state appellate court's fact-specific application of the Mendenall-Chesternut test to a set of circumstances considerably more coercive and intimidating than Chesternut itself. The Court of Appeal said, "This case involves more than a pursuit, as Officer Pertoso did not pursue appellant, but ran in such a fashion as to cut him off and confront him head on. Under the rationale of Chesternut, this action is reasonably perceived as an intrusion upon one's freedom of movement and as a maneuver intended to block or 'otherwise control the direction or speed' of one's movement." The Court of Appeal, also noted that the "facts of the instant case illustrate a situation tantamount to a physical seizure. Appellant, who was running down the sidewalk, had his physical freedom of movement sufficiently blocked by the presence of a police officer, wearing a jacket marked 'police,' who was 11 feet away and running toward him." (See Appendix A, p. 12, n. 4.)

Here, the Court of Appeal applied the correct standard, the Mendenhall-Chesternut standard, to the fact-specific situation presented above, and the result should not be disturbed.

In Minnesota v. Olson ___U.S.___ 110 S.Ct. 1684 (1990), a Fourth Amendment case, this Court found that the Minnesota Supreme Court applied the correct standard in determining whether exigent circumstances existed when a defendant was arrested in his house without a warrant. This Court said, "We are not inclined to disagree with this

fact-specific application of the proper legal standard." Id.at p. 1690.

Here, the proper legal standard is that set forth in United States v. Mendenhall, supra, and followed in Chesternut. The Court of Appeal in Hodari D. applied the proper legal standard as set forth in Mendenhall and Chesternut. Because the Court of Appeal applied the proper standard to a fact-specific situation, this Court should decline to disturb the Court of Appeals application of the reasonable person standard just as it did in Minnesota v. Olson, supra.

Cases decided in the United States after Mendenhall and before Chesternut have never held that a physical restraint is required for a detention.

In Swicegood v. State 448 So.2d 433 (Ala.Cr.App., 1983), People v. Thomas 660 P.2d 1272 (Colo., 1983), and People v. Washington 192 Cal.App.3rd 1120, 238 Cal.Rptr. 840 (1987), abandoned contraband was suppressed in each case because of police chases held to constitute illegal detentions.

And, in Hawkins v. State 758 S.W.2d 255 (Tex.Cr.App. 1988), a post Chesternut case, police officers gave chase after Hawkins who they knew to be a person who sold drugs. During the chase, Hawkins abandoned contraband. The Texas Court of Appeal, aware of the holding in Chesternut, said the facts in Hawkins were distinguishable from those in Chesternut. The Texas Court of Appeal said, "The actions taken by the Ft. Worth police officers were exactly the

type not found in the Chesternut case, e.g., actions designed to control the direction of appellant's movement by 'closing in' on him in order to detain and question him. The instant case represents more than a mere approach by law enforcement officers, identified as such." Thus, the holding in Hawkins is consistent with and grounded on Chesternut.

Despite the lack of precedent, The petitioner cites Brower v. Inyo County __U.S.__, 103 L.Ed.2d 628, 635 (1989) for the proposition that in order for there to be a detention there must be physical restraint. In Brower, a fleeing suspect was killed when his car crashed into a police roadblock. The lower court held that the death was caused by the suspect's voluntary act of failing to stop. Brower also makes reference to Hester v. United States 265 U.S. 57 (1924) to illustrate its holding requiring wilful police misconduct. If Brower is applicable in any aspect to this case, it would be in the definition of a seizure as petitioner pointed out where the Brower court defined a seizure as "a Government termination of freedom of movement through means intentionally applied." Indeed, Brower was a case that involved a physical termination of freedom of movement of the most dramatic kind -- a fatal collision into a police roadblock. In Hodari D., when the officers engaged in an active chase, their intent was to terminate respondent's freedom of movement.

In Chesternut, this Court explicitly declined to adopt the rule that the petitioner is urging now, i.e. an

inflexible rule on what constitutes a detention, that is, a physical restraint rule. Chesternut established a fact oriented test. And, the opinion in Hodari D. is just one state court's application of the "reasonable person" test. Under the ruling in Chesternut, the Court of Appeal's ruling in Hodari D. is the kind of ruling one could expect.

The opinion in Brower gave no indication that this Court was re-writing Fourth Amendment law. This Court has always held there are two kinds of detentions: a physical detention and a show of authority. Hodari D. is a blend of the two - the police officers were attempting to cut respondent off and there was a show of authority.

In Chesternut, this Court had an opportunity to adopt the inflexible requirement of a physical restraint rule that the petitioner puts forth and declined to do so. It is ridiculous for petitioner to suggest that in a case (Brower was a civil rights case) not dealing with the detention issue, this Court meant to re-write Fourth Amendment law with respect to detentions and do away with the reasonable person test set forth in Mendenhall and followed in Chesternut.

In an illuminating post Chesternut-Brower state court decision in State v. Lemmon 568 A.2d 48 (Md. 1990), the Court of Appeals in a fact-specific case similar to Hodari D. followed the reasonable person test set forth in Chesternut. The Court of Appeal declined to accept the petitioner's "notion" that Brower refined Chesternut to hold that no detention occurs until the police officer has

physical control.

In Lemmon, plainclothed officers in an unmarked car acting on a tip observed two black males (one was Lemmon) in the area. Lemmon started to walk away when he saw the officers. One of the officers identified himself and ordered Lemmon to "Come here." In response, Lemmon fled, and the officers gave chase on foot and with a police car. The police car attempted to cut Lemmon off. During the chase, Lemmon abandoned contraband.

The Court of Appeal rejected the petitioner's "notion." The petitioner's "notion" was that Brower refined Chesternut by "flatly holding that no seizure takes place until the restraining effect of a police command actually occurs, i.e., when the person is within the police officer's physical control." Id. at p. 573. The Court of Appeal went on to say, "we believe that Brower is in no way inconsistent with Chesternut and leaves the Chesternut test intact in all material aspects." Id. at p. 574.

Similarly, in State v. Lopez 783 P.2d 479 (N.M.App. 1989), police officers used their van to block defendant's lawfully parked pickup, four police officers approached the pickup, and the officers invoked their authority by displaying their badges. The Court of Appeal stated there was sufficient evidence to support a finding of physical restraint and a show of authority. Id. at p. 482. Lopez read Brower as consistent with the principle that "[b]locking a subject's vehicle is a form of physical restraint." Id. Hodari D. was a case of the police

blocking the respondent's path and approaching him.

The petitioner has not cited any case that has adopted the petitioner's anomalous interpretation of Brower. Thus, the approach taken by the California Court of Appeal in Hodari D. is consistent with the approach taken by courts in other states, i.e., each case is decided on a fact by fact basis.

Succintly put, there is no precedential value in Hodari D., and this fact-specific case does not offer any kind of novel issue which lends itself to a petition for certiorari.

Finally, it would be bad public policy to re-write Fourth Amendment law to require a law enforcement officer to physically restrain a person in order to detain. There is inherent danger to police officers and citizens in requiring a physical restraint in order to detain. Encounters between police officers and the citizenry would be escalated to a deadly level if this Court would require a physical restraint of every defendant. By not recognizing certain police conduct, i.e., chases, as a detention, the petitioner's position would allow just the kind of harassment (without reasonable suspicion) that Terry v. Ohio 392 U.S. 1 (1968) and its progeny intended to prevent.

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C. Whether evidence abandoned upon an illegal detention must be suppressed.

The Fourth Amendment exclusionary rule applies when a person is under illegal detention and he discards contraband as a result of that detention. Hodari D. is a fact-specific application of the exclusionary rule.

There is nothing new in the proposition that once illegal police conduct commences, an act of the defendant which is directly induced by that illegality and which reveals evidence is the fruit of the illegal conduct, even if the defendant's act is "voluntary" in the Fifth Amendment sense. Also, the question of whether the particular act is the fruit of the detention is a fact-specific inquiry.

Brown v. Illinois 422 U.S. 589 (1975), Dunaway v. New York 442 U.S. 189 (1979) and Taylor v. Alabama 457 U.S. 687 (1982) illustrate the preceding point. In Brown, Dunaway and Taylor the defendants were arrested without probable cause and made inculpatory statements while in custody and after being Mirandized. The state courts held that the Miranda warning broke the causal connection between the illegal arrest and the inculpatory statements. This Court held that the Miranda warnings failed to break the causal connection between the illegal arrests and held the statements inadmissible.

Brown v. Illinois, supra, set forth factors to be considered in determining whether evidence is a product of police illegality. The facts are whether the evidence was

obtained as a product of the defendant's free will, the temporal proximity of the illegality to the discovery of the evidence, the presence of intervening circumstances, and the purpose and flagrancy of the official conduct. Id. at pp. 603-604.

Brown, Dunaway, and Taylor stand for the proposition that the indirect fruits of an illegal search or arrest should be suppressed when there is a causal connection to the underlying illegality.(3)

Similarly, in Lanier v. South Carolina 474 U.S. 25 (1985) this Court held that "the fact that [a] confession may be 'voluntary' for purposes of the Fifth Amendment, in the sense that Miranda warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest. In this situation, a finding of 'voluntariness' for purposes of the Fifth Amendment is

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3. In Harris v. New York ___U.S.___ 110 S.Ct. 1640 (1990), a defendant was arrested in his home without a warrant but with probable cause, in violation of the Fourth Amendment under Payton v. New York 445 U.S. 573 (1980). At the police station, the defendant made a confession. The Court, distinguishing Brown v. Illinois, supra, held that the confession was not a fruit of the illegality entry into the defendant's home. The statement was not linked with the illegality, i.e., the arrest within the home. The Court was adhering to the rule that where the custody was illegal, any fruits thereof, unless sufficiently attenuated, is the fruit of that illegality. In Hodari D., the detention itself -- the custody -- was illegal. None of the officers had a reasonable suspicion that illegal activity was taking place. The trial court concluded that police had no reasonable cause to detain respondent. And, the petitioner does not dispute the trial court's finding that the police had no reasonable cause to chase or detain respondent.

merely a threshold requirement for Fourth Amendment Analysis." [Citations.] Id. at p. 26.

The exclusionary rule comes into play if and only if the police conduct is so restraining that a reasonable person would not feel free to leave. Hence, just as in Chesternut, the usual police approach of a citizen will have no such effect, so there is no danger that abandoned property will be suppressed where the police have done nothing illegal. Conversely, however, where the police have illegally detained someone, the fruits of that detention must be determined under the test of Brown, Dunaway, and their progeny.

In Hodari D., the illegal police conduct involved a police officer running head on at respondent in an effort to stop him. The officer's purpose was to stop him because of a hunch that illegal narcotic activity had taken place. The officer's actions were unfounded because he saw nothing other than four Black youths standing around a car. The immediate discard of contraband was directly caused by the police misconduct. There were no intervening circumstances.

In Hodari D., the abandonment of contraband was contemporaneous with the illegal police conduct of seizing the respondent. In fact, the petitioner concedes "the taking was he result of governmental action, for respondent indisputably abandoned the rock in reaction to the approaching officer." The petitioner's own formulation of the causality here brings Hodari D. within Brown and its progeny. The only real difference between this case and

the Brown line of cases is that the latter involved what suspects verbally divulged at the very moment of the seizure. Thus, here the case for suppression is even stronger than in cases like Brown because the line between the illegality and the evidence is still tighter.

Chesternut indictates that the exclusionary rule will have no application where an officer merely approaches a defendant or engages in a conversation or otherwise initiates a consensual encounter. In other words, it has no application where the officer does not detain the suspect. Only when a police officer illegally restrains a defendant under the Mendenhall-Chesternut test does the exclusionary rule come into play at all. The situation in which a police officer either by force or a show of authority communicates to a person that he is not free to leave despite the lack of a reasonable suspicion is precisely the kind of situation that should be covered by the exclusionary rule. The petitioner's position would undermine the deterrent effect of the exclusionary rule. Cases throughout the United States reflect that it is not uncommon for a defendant confronted with this show of authority to throw down contraband that he happens to have. This kind of scenario must be policed by the Fourth Amendment. It is quite predictable that someone illegally detained by the police will try to dispose of an incriminating item. The link between these two events, i.e., the illegal detention and the abandonment, is so close and recurring one and that is why a common sense

approach must be taken and say that the abandonment is the fruit of the illegal act.

The petitioner does not and cannot claim that the cases throughout the country are in a state of disarray on this point. On the contrary, both federal and state decisions consistently recognize that evidence thrown down or discarded upon an illegal detention is not a voluntary abandonment and must be suppressed.

In United States v. Beck 602 F.2d 726, (5th Cir., 1979), police officers unlawfully ordered a car to stop. The occupants tossed illegal drugs out the car window. The Court ordered the contraband suppressed as a result of the police activity. Beck also held that "An abandonment that is the product of police misconduct is not voluntary and cannot, therefore, vitiate the taint of an illegal detention." Id. at p. 729-730.

United States v. Pirolli 673 F.2d 1200, 1204 (11th Cir. 1982) also held that an abandonment that was the product of police misconduct was not voluntary.

In Hawkins v. State, supra, Moss v. Com. 373 S.E.2d 170 (Va.App. 1983), People v. McFadden 524 N.Y.S.2d 902 (A.D. 1988), People v. Menifee 100 Cal.App.3d 235, 160 Cal.Rptr. 682 (1979) and People v. Washington, supra, each court found an involuntary abandonment of contraband as a result of police misconduct.

The purpose of the exclusionary rule is to deter the kind of police misconduct that is illustrated by the cases. The exclusionary rule would be meaningless if it allowed

police officers to harass people without reasonable suspicion and any contraband that turned up in an illegal encounter could then come in on the theory that the act that revealed it was voluntary even if the detention was not. This does not mean that a defendant can "immunize" himself everytime he sees a police officer approaching as petitioner would have this court believe. Petitioner claims that the unpublished opinion in Hodari D. gives a suspect a right to "immunize" himself by "preemptively" discarding contraband if the police approach. Petitioner relies upon Brower. However, the facts in Brower did not even remotely involve any abandonment questions. The Court's passing citation of Hester only illustrated its holding requiring wilful police conduct. In addition, the Court no more intended to use a civil rights/wrongful death suit to overrule Brown and other fruits cases, that it did to overrule Chesternut with it.

In Smith v. Ohio, ___U.S.___ 110 S.Ct. 1288 (1990), a defendant threw a paper bag on the hood of his car after the police ordered him to stop. The state claimed that throwing the paper bag on the car was an abandonment. This Court said it was not an abandonment because the defendant was trying to protect his privacy interest in it. Smith rebuts the petitioner's claim that the discarding of incriminating evidence in the face of police conduct is necessarily a voluntary act which takes the evidence out of the Fourth Amendment.

Since the evidence in Hodari D. was abandoned

contemporaneously with an illegal detention, the Fourth Amendment exclusionary rule came into play. The California Court of Appeal followed Brown and its progeny and took a common sense approach and applied the Mendenhall-Chesternut test to a fact-specific situation. The Court of Appeal correctly held that the contraband must be suppressed, and its decision should not be disturbed.

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CONCLUSION

Hodari D. does not present any novel issues to this Court. There is nothing special about this case as to both the detention and abandonment issues. Hodari D. is consistent with many cases through the country, including many cases that post-date Chesternut and Brower. The result here turned on the facts, just as this Court in Chesternut contemplated detention cases would. As in Minnesota v. Olson, supra, there is no reason at all for this Court to disturb one state court's very fact-specific application of the broad governing standards. In other words, there is simply nothing in this unpublished case meriting the Court's attention.

For these reasons, the petition for a writ of certiorari should be denied.

Dated: July 29, 1990

Respectfully submitted,

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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1989

THE STATE OF CALIFORNIA

Petitioner,

v.

HODARI D.,

Respondent.

OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

CERTIFICATE OF SERVICE

I, **JAMES L. LOZENSKI**, a member of the Bar of this Court, hereby certify that on July 30, 1990, a copy of the respondent's brief in opposition was mailed, first-class postage prepaid, to: Ronald E. Niver, Supervising Deputy Attorney General, State of California, 350 McAllister Street, San Francisco, CA 94102, counsel for petitioner herein. I further certify that all parties required to be served have been served.

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